SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term 1964

No. 739

COLGATE-PALMOLIVE COMPANY,
Petitioner,

—against—

THE HONORABLE FREDERICK vP. BRYAN, Judge of the United States District Court for the Southern District of New York, and all other judges and officers of said Court,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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BRIEF FOR RESPONDENTS IN OPPOSITION

Counter Statement of Question Presented

Should this Court grant certiorari to review the Second Circuit's unanimous decision denying without opinion a writ of *mandamus* against a District Court Judge who has denied defendant's motion to transfer a personal injury action under 28 U.S.C. Section 1404(a) on the ground that the balance of convenience of parties and witnesses is tipped in favor of plaintiff's choice of forum?

Counter Statement of the Case

(a) The Basic Issue Presented

Plaintiff, Phyllis O. Mills, severely injured in an automobile accident in northern Virginia, brought suit in the Southern District of New York to recover damages because of the negligence of an employee of defendant, Colgate-

Palmolive Company (petitioner herein). Jurisdiction is based on diversity of citizenship.

Defendant-petitioner moved pursuant to 28 U.S.C. Section 1404(a) to transfer the case to the United States District Court for the Eastern District of Virginia. District Judge Bryan (respondent herein) denied the motion for the ultimate reason that "the balance [of convenience of parties and witnesses] seems to be tipped in plaintiff's favor". The Circuit Court (J. Edward Lumbard, Chief Judge, Leonard P. Moore and J. Joseph Smith, Circuit Judges), without opinion, denied defendant's petition for a writ of *mandamus*. Defendant now seeks a writ of certiorari from that denial for a writ of *mandamus*.

There is no question of law for determination by this Court.

The decision of Judge Bryan is reported in 232 F. Supp. 577 (S.D.N.Y. 1964). A copy is appendix A hereto.

(b) The Facts

Plaintiff is a citizen of Virginia and a temporary resident of the State of New York. Defendant-petitioner, Colgate-Palmolive Company, is a Delaware corporation having its principal place of business at 300 Park Avenue, New York City.

The accident out of which this suit grows occurred on October 29, 1962. After three weeks' treatment at Doctors Hospital in Washington, D. C., plaintiff who was then totally paralyzed, was removed by ambulance to Columbia Presbyterian Hospital in New York City to which she was confined for seven months and where she has been treated for the last two years. This suit was not commenced in

the Southern District of New York until over a year after this treatment was begun. (16*).

It was established to the satisfaction of Judge Bryan that the following persons, treating surgeons and doctors, (all of whom submitted affidavits in opposition to petitioner's motion to transfer) were necessary witnesses and that their live testimony was "of vital importance" to plaintiff's cause of action (19).

Dr. James Lawrence Pool

Dr. Stanley B. Braham

Dr. Frank E. Stinchfield

Dr. John H. Laragh

Dr. John A. Downey

Dr. Hans J. Heller

In addition to the evidence supplied by these medical witnesses, that of the surgeon who has performed and will be performing a series of operations on Miss Mills' hands (the most recent of which was performed as lately as December 21, 1964) will be required, as well as five nurses who attended her at Columbia Presbyterian Hospital. All of these people reside in the New York area, near Columbia Presbyterian, and it was also established to Judge Bryan's satisfaction, at least, that these medical witnesses would not be available for and would not attend a trial in Virginia. (19).

In order to continue rehabilitation, Miss Mills, after leaving the hospital, took up residence in the city of New

* Page references to Judge Bryan's opinion are those in appendix A.

York, renting an apartment where she will live until further surgery and treatment are of no avail, when she will return to her home in Middleburg, Virginia. (15).

The question of liability is subordinate to the proof of the physical injuries. Petitioner in response to a request to admit has acknowledged that the accident in suit occurred when its employee pulled out from behind a moving truck, partly crossed an unbroken double line to the wrong side of the road and crashed into the vehicle driven by Miss Mills, which was coming from the opposite direction. Petitioner has also admitted that its employee was thereafter convicted of reckless driving.

Petitioner-defendant's assertion (Pet. 5, 6), that there are many fact witnesses whose testimony may not be available unless the case is tried in Virginia, is misleading. Not one of these witnesses was called by defendant's employee when he was tried and convicted on the reckless driving charge. These witnesses are favorable to plaintiff and have indicated by affidavit on this motion that they will come to New York to testify. (21). No proof has been submitted by defendant that anyone of these fact witnesses would be of value to it. The only two affidavits in support of the motion to transfer were made by petitioner's attorney. The medical witness, Dr. Arthur Morris, treated plaintiff in the hospital in Washington, D. C. His testimony is available by deposition. (21).

There is no support for the contention that a denial of the application to transfer was an abuse of discretion.

POINT I

The law has been settled by this Court.

This Court has held repeatedly that the determination of the propriety of a transfer is within the discretion of the district court judge. Yet, in an effort to avoid the weight of this principle, petitioner (Pet. 7, 8) takes issue with three statements in the opinion of Judge Bryan, to wit:

> (1) "In determining such a motion a plaintiff's choice of forum must be given substantial weight and will not be disturbed unless the balance of convenience and the interest of justice weighs heavily in favor of defendant." (16);
>
> (2) "It is the defendant's burden to overcome plaintiff's choice of forum and to demonstrate that the balance of convenience so preponderates in its favor." (16);
>
> (3) "Defendant has failed to show that the balance of convenience in the interest of justice weighs so heavily in its favor as to overcome the substantial weight to be given to plaintiff's choice of forum." (22).

Petitioner contends that these statements are "in direct conflict with the principles applicable in applying sound judicial discretion on applications for transfer * * * as enunciated by this Court in *Norwood* v. *Kirkpatrick*, 349 U.S. 29 [1955], and most recently in *Van Dusen* v. *Barrack*, 376 U.S. 612 [1964]." (Pet. 8).

Before discussing petitioner's erroneous interpretation of the *Norwood* and *Van Dusen* cases, it should be made

clear that Judge Bryan, in ruling against transfer, did not rest his decision solely on the statements excerpted from his opinion by petitioner and set forth just above. Indeed, in the last quotation, commencing "Defendant has failed to show [etc.] * * * ", petitioner has omitted the all-important closing sentence of Judge Bryan:

> "Indeed, if anything, the balance [of convenience] seems to be tipped in plaintiff's favor." (22).

In other words, while Judge Bryan did state that the burden was upon the defendant to overcome plaintiff's choice of forum, he concluded that in any event the balance of convenience was in plaintiff's favor.

So far as the cases advanced by petitioner are concerned, counsel for petitioner argues, as it did unsuccessfully below, that the *Norwood* case stands for the proposition that a plaintiff's choice of forum is entitled to little weight and that a defendant moving for a transfer "has no burden of overcoming plaintiff's choice". (Pet. 11).

Plaintiff Mills in her memoranda below agreed that transfer is a matter for the discretion of the district court and that this discretion is broader under Section 1404(a) than under the doctrine of *forum non conveniens* which gave almost conclusive weight to a plaintiff's choice of forum because that doctrine would otherwise permit dismissal of the complaint to the certain detriment of the plaintiff. See *All States Freight* v. *Modarelli*, 196 F. 2d 1010, 1011 (3d Cir. 1952). But petitioner's argument that the plaintiff's choice of forum is entitled to virtually no weight on a motion to transfer cannot be sustained and is contradicted by the very language petitioner quotes from *Norwood* v. *Kirkpatrick* (Pet. 8):

> "* * * [W]e believe that Congress, by the term 'for the convenience of parties and witnesses, in the interest of justice,' intended to permit Courts to grant transfers upon a lesser showing of inconvenience. *This is not to say that the relevant factors have changed or that the plaintiff's choice of forum is not to be considered,* but only that the discretion to be exercised is broader." 349 U.S. at 32 (Emphasis supplied).

Neither does the decision of this Court in *Van Dusen* v. *Barrack*, 376 U.S. 612 (1964) support petitioner's plea for a writ of certiorari. There the sole issue was whether the underlying suits might have been brought in the transferee district, and this Court held that a voluntary declination by the plaintiffs to qualify as ancillary administrators in the state of the transferee district did not keep that district from being one "where it [the suit] might have been brought" (28 U.S.C. 1404(a)). This question is in no way involved in the instant case. It was conceded at the opening of the argument before Judge Bryan, as it still is, that this suit "might have been brought" in the transferee district. Instead it was brought in the Southern District of New York, and that court has exercised its discretion "for the convenience of parties and witnesses, in the interest of justice" to retain it there. The law applied by Judge Bryan is well settled and certainly requires no further enunciation by this Court.

POINT II

There is no conflict between the circuits requiring reconciliation by this Court.

Petitioner attempts to fabricate a circuit conflict. Inasmuch as the Second Circuit wrote no opinion in denying the petition for mandamus, it is impossible to know the bases for its refusal to examine the discretionary decision of Judge Bryan. Nonetheless, petitioner argues:

> "The affirmance by the [Second Circuit] Court of Appeals of the decision * * * denying removal is in substantial variance with the basic principles for the exercise of sound judicial discretion on such motions enunciated by the Courts of Appeals in the Fifth Circuit in *Koehring Co.* v. *Hyde Construction Co.*, 324 F. 2d 295 [1963], the Seventh Circuit in *Chicago, Rock Island & Pacific Railroad Co.* v. *Igoe*, 220 F. 2d 299 [1955], *cert. den.*, 350 U.S. 822 [1955], the Fourth Circuit in *Southern Railway Company* v. *Madden*, 235 F. 2d 198 [1956], *cert. den.*, 352 U.S. 953 [1956], and in the Sixth Circuit in *Lemon* v. *Druffel*, 253 F. 2d 680 [1958], *cert. den.*, 358 U.S. 821 [1958]." (Pet. 12).

An analysis of the foregoing decisions belies any conflict and in fact affirms the common denominator that each transfer motion is a discretionary matter and must be decided on its own facts. See *United Air Lines* v. *United States*, 192 F. Supp. 795, 796 (D. Del. 1959); 1 Moore, *Federal Practice* ¶ 0.145 [5] at pp. 1779-80 (2d ed. 1961).

The *Koehring* case involved no question of a writ of *mandamus*. Defendant appealed to the Fifth Circuit from

the denial of motions to dismiss for want of jurisdiction and to transfer. The circuit court did not pass on the jurisdictional issue but ordered a transfer. The action was not one based on personal injuries but was grounded on an alleged breach of contract in defendant's failure to construct a cooling and mixing plant. In directing transfer, the Fifth Circuit observed:

> "* * * [A]ll relevant facts concerning its [defendant's] alleged failure to perform occurred in Oklahoma [the transferee district] * * *. Most of the witnesses to the alleged failure of performance reside at or near the plant site, and the records of the U.S. Corps of Engineers dealing with the functioning of the plant are kept in Tulsa." 324 F. 2d at 296.

In the *Igoe* case, the Seventh Circuit did issue a writ of *mandamus* to order a transfer but the facts therein were entirely dissimilar. Plaintiff there was a citizen *and resident* of the transferee district at the time she commenced suit for her husband's wrongful death; all witnesses were resident in the transferee district. Inasmuch as plaintiff was acting in a representative capacity, appointed by a state court in the transferee state, authorization of that court would be required to effect any settlement. The only argument advanced against transfer was that plaintiff had moved to the transferor forum as a result of her remarriage some nine months after commencement of her suit there.

The *Southern Railway* case did not concern a petition for writ of *mandamus* but dealt with an appeal after judgment where damages had been awarded in a personal injury action by a plaintiff injured in Charlotte, North

Carolina. One of the issues raised on appeal was "whether there was an abuse of discretion in not transferring the case [from the Eastern District of South Carolina at Columbia] to Charlotte, North Carolina". The Fourth Circuit directed transfer upon concluding that most witnesses on issues of both liability and damage would have found the transferee forum to be more convenient. Further, it appeared that the plaintiff was not a resident in the judicial district where the case was brought but lived in a town approximately as far from Columbia as from Charlotte.

In the final decision relied on by petitioner, that of *Lemon* v. *Druffel,* the writ of *mandamus* was denied as in the case at bar. There, plaintiff had filed an FELA action against the defendant railroad in a Kentucky district court but then obtained a dismissal and filed his action in the District Court for the Southern District of Ohio. Thereafter, the defendant's motion to transfer the action back to Kentucky was granted. Although plaintiff was an Ohio resident he lived only some eight miles from the Kentucky court and approximately 140 miles from the Ohio court. All the material and necessary witnesses, including a number of doctors who attended plaintiff, resided in Ohio. The Sixth Circuit declined to grant *mandamus*—the reasoning of that Court is in apparent accord with the refusal of the Second Circuit to grant *mandamus* herein.

> "In this case, as in most cases of this kind, there are factors favorable to both the District Court in Kentucky and the District Court in Ohio, requiring a balancing of conveniences by the District Judge. * * * We do not find present in this case the exceptional circumstances where there is a clear abuse of

> discretion such as to justify the use of the writ." 253 F. 2d at 685.

Clearly, a compelling case of abuse of discretion by a district court must be made out before the harsh and extraordinary remedy of *mandamus* is appropriate. See *Bankers Life & Casualty Co.* v. *Holland*, 346 U.S. 379, 383 (1953). ("The supplementary review power conferred on the courts * * * in the All Writs Act [28 U.S.C. § 1651(a)] is meant to be used only in the exceptional case where there is clear abuse of discretion or 'usurpation of judicial power' * * *.") This is particularly true in such a case as this where petitioner has succeeded in effectually obtaining the interlocutory appeal which is not sanctioned by law and thereby delayed the progress of this action for some six months. In the interest of centering and concluding transfer motions in the district courts, the decision of the Second Circuit evidencing close circumscription of efforts to overturn transfer motion orders is the only sound judicial course.

CONCLUSION

Petitioner has failed to show that Judge Bryan abused his discretion in denying a transfer, that the Second Circuit erred in refusing to grant the drastic remedy of *mandamus*, or that a grant of certiorari is warranted under any of the standards established by this Court.

The petition should be denied.

Dated: December 28, 1964.

Respectfully submitted,

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J. ROGER CARROLL
T. RICHARD BROWN
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APPENDIX A

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

63 Civ. 3597

PHYLLIS O. MILLS,

Plaintiff,

—against—

COLGATE-PALMOLIVE COMPANY,

Defendant.

Appearances:

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Appendix A—Opinion of Bryan, D.J.

OPINION

BRYAN, District Judge:

Defendant moves under 28 U.S.C. § 1404(a) to transfer this diversity action for personal injuries to the Eastern District of Virginia, Alexandria Division, "for the convenience of parties and witnesses, in the interest of justice."

At the time of the accident in which the injuries sued for occurred plaintiff Phyllis O. Mills was a citizen of Virginia and was domiciled with her parents in Middleburg, Virginia. She is still a citizen of that State. Defendant Colgate-Palmolive Company is a Delaware corporation authorized to do business in New York, and has its principal place of business here. It is also authorized to do business in Virginia.

The accident occurred on October 29, 1962 when a car driven by defendant's employee Floyd collided with the car which plaintiff was driving on Route 50 near Middleburg. Apparently Floyd was attempting to pass a truck proceeding in the same direction ahead of him. In so doing he swung out from behind the truck, crossed partially over an unbroken double line in the center of the highway and collided head on with the plaintiff who was driving her car in the opposite direction. Defendant admits that Floyd was on the defendant's business and acting within the scope of his employment. Floyd was thereafter convicted of reckless driving in the County Court of Loudon County, Virginia, on charges based on the accident.

Plaintiff, who was 21 at the time of the accident, was

extremely seriously injured and she is suing for two million dollars damages. She was taken by ambulance to Doctors Hospital in Washington, D. C. and was found to be almost completely paralyzed. For some time she was not only paraplegic but virtually quadraplegic. Her parents arranged for Dr. James Lawrence Pool, Chairman of the Department of Neurology at Columbia Presbyterian Medical Center, and a leading Neuro-Surgeon, to see her in Washington. After three weeks in the Washington hospital, upon Dr. Pool's advice she was removed by ambulance to the Neurological Institute at Columbia Presbyterian Medical Center in New York. She was a patient there for seven months and was under the care and treatment of several distinguished specialists in various fields. Two operations on the cervical spinal cord were performed and extensive traction and body rotation procedures were employed in an effort to restore the motor function in her arms, hands and legs.

After her discharge from the Neurological Institute, plaintiff still had a long way to go. In September, 1963, on the advice of her physicians, she commenced a concentrated course of physical therapy at the Rehabilitation Center of the Neurological Institute. She took a two and one-half year lease on a small apartment in New York to enable her to pursue her physical therapy treatments until further progress is no longer possible. Thus, while she remains a citizen of Virginia, she is temporarily a resident of this district. It is not presently possible to forecast how long her course of physical therapy treatments will take and her eventual full recovery is at best very doubtful.

Appendix A—Opinion of Bryan, D.J.

On December 24, 1963, more than a year after the accident occurred and some time after she had made arrangements to reside here temporarily she commenced this action. Defendant interposed an answer denying liability and pleading contributory negligence and aggravation of plaintiff's injuries through her own fault. The present motion to transfer followed.

The general principles governing motions for transfer under § 1404(a) are by now so well settled and have been discussed at length so frequently that it would serve no good purpose to repeat them here. See, e.g., Norwood v. Kirkpatrick, 349 U.S. 29 (1955); Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947); Lykes Brothers S.S. Co. v. Sugarman, 272 F. 2d 679 (2 Cir. 1959); Schindelheim v. Braniff Airways, Inc., 202 F. Supp. 313 (S.D.N.Y. 1962); Rodgers v. Northwest Airlines, Inc., 202 F. Supp. 309 (S.D.N.Y. 1962); DeSousa v. Panama Canal Co., 202 F. Supp. 22, 26 (S.D.N.Y. 1962).[1] In determining such a motion a plaintiff's choice of forum must be given substantial weight and will not be disturbed unless the balance of convenience and the interest of justice weighs heavily in favor of defendant. It is the defendant's burden to overcome plaintiff's choice of forum and to demonstrate that the balance of convenience so preponderates in its favor.

Apart from applicable general principles, however, the numerous cases are not particularly helpful. Each case must be decided on its own particular facts. Thus such

[1] Here the suit might have been brought in the Virginia District and the rule of Hoffman v. Bleski, 363 U.S. 335 (1960) is satisfied.

cases as Tyrill v. Alcoa Steamship Company, Inc., 158 F. Supp. 853 (S.D.N.Y. 1958) and Markantonatos v. Maryland Drydock Co., 110 F. Supp. 862 (S.D.N.Y. 1953), relied on by plaintiff are not controlling.

In this case defendant contends that the action has no logical connection with New York and was brought in this district by the plaintiff for the purpose of securing an enhanced award of damages from a metropolitan jury. It urges that for these reasons plaintiff's choice of forum should be given less weight than would ordinarily be the case. It asserts that the principal issue in the case is that of liability and that trial should be held in the Virginia district where the accident occurred, where the majority of witnesses on that issue reside and where the court would be thoroughly conversant with the applicable Virginia law. It claims that it will be prejudiced if the case is not transferred there.

Defendant [plaintiff], on the other hand, urges that in view of the facts as they appear the question of the amount of her damages rather than that of the liability is the principal issue in the case, that on that issue the relevant events took place in New York and almost all of the witnesses on that issue are distinguished New York professional men who actually treated her and who would find it difficult, if not impossible, to attend a trial in Virginia. It is her position that a transfer to that district would be to her substantial prejudice. She says that the action has a logical connection with this district and should be tried here and that her choice of forum was dictated by these considerations and by the fact that her temporary but indefinite residence in New York was essential for her

rehabilitation from the effects of the accident and not by any desire to secure an enhanced verdict as defendant claims.

I am not impressed by defendant's suggestion that the action was brought in this district because the plaintiff was forum shopping and that her choice of forum should be given little weight for that reason. Plaintiff was brought to New York by her parents when her condition was extremely serious solely so that she could get the best treatment obtainable and be able to take advantage of every possibility of ultimate salvage. The top flight professional men at the Columbia Presbyterian Medical Center in the several relevant fields made this the logical and sensible decision under the circumstances. These men included in addition to Dr. Pool, Dr. Frank Stinchfield, the renowned orthopedic surgeon and Chairman of the Department of Orthopedic Surgery, and four other highly qualified members of the Columbia Presbyterian staff specializing respectively in urology, clinical medicine, physical medicine and rehabilitation and physical therapy. The efforts of this team of doctors have proved at least partially successful. Plaintiff herself has made every effort to push forward on the essential program of physical therapy prescribed for her attempted rehabilitation. The temporary residence which she now maintains and must indefinitely maintain here is necessary for that purpose. Incidentally, any success which she may have in her efforts at rehabilitation cannot fail to redound to the benefit of defendant.

Though plaintiff remains a citizen of Virginia and hopes to return there, she is very properly residing in New

York for these very purposes. As to one of the two major issues, that of the nature, extent and permanence of the injuries, the suit has a real and actual connection with this district. Plaintiff was not only entitled to bring suit here but from her point of view this district was the logical and proper forum for this litigation. Her choice of forum is to be given full weight in determining transfer.

Moreover, under the circumstances here it might well be prejudicial to her were the case to be tried in Virginia. On the major issue of the nature, extent and permanence of her injuries the live testimony of the physicians who treated her is of vital importance to her case. Depositions would not be a satisfactory substitute. Each of these physicians has a different specialty. In a case where the injuries are as serious as this it cannot be said, as the defendant contends, that their testimony would be merely cumulative. It is quite understandable that it would be not only highly inconvenient but virtually impossible for these leading and busy physicians engaged both in active practice and in hospital and teaching responsibilities, to attend a trial in Virginia as their affidavits submitted on this motion clearly indicate. In addition, the testimony of at least some of the five nurses who cared for plaintiff, all of whom reside here, will be necessary to her case. Such testimony cannot be brushed off with the claim that the hospital records are all she needs. This is an entirely unrealistic concept of what constitutes proof of injuries and damages in a case such as this. Indeed, it is the plaintiff and not the defendant who is entitled to determine the quality and extent of proof which is necessary to support her claims.

Moreover, assuming that the issue of liability is of equal importance with the issue of damages (and this question is surely not free from doubt under the circumstances disclosed here) defendant has not shown it will be substantially prejudiced on this issue were the case to be tried in this district. Apart from plaintiff and defendant's employee Floyd, there are nine persons who will be witnesses on the question of liability. Two of these are West Virginia residents who were driving behind plaintiff's car when the accident occurred. For all practical purposes they could be as easily produced here as in Virginia. The seven others are all residents of Virginia. Four of them, the driver of the Virginia Highway Department truck which Floyd was attempting to pass when the accident occurred, and three other Virginia Highway employees who were in the truck at the time, may be considered as eye witnesses of the accident. There is also a State engineer who came upon the scene shortly after the accident, a Virginia State Trooper who was called to the scene, and the local service station operator who came to the accident in his wrecker.

While the defendant claims that these witnesses are "unfriendly" because it has been unable to obtain statements from them, and says it does not know what they will testify to, the fact is that all seven testified in the criminal proceedings in which Floyd was convicted of reckless driving. Doubtless the defendant can obtain the testimony they gave there.

However, all of these nine are witnesses for the plaintiff who has the burden of establishing liability in any event. The plaintiff has not only stated her intention of

producing these witnesses at the trial but has annexed to her papers in opposition affidavits of each of them, including the two West Virginia residents, stating that they would be willing to come to New York for a trial. Initially plaintiff will bear the expense of bringing them here. Upon their own representations that they are willing to appear and the plaintiff's representations that she will bring them here, there is every reason to suppose that they will be present at a trial here. They will thus be available to the defendant for cross-examination and the defendant will also be able to call them in its own case in the unlikely event that it should deem this to be desirable.

Defendant also lays stress on the testimony of Dr. Morris who treated plaintiff during her stay in Doctors Hospital in Washington, and who may not be available to testify here. But Dr. Morris is a witness for the plaintiff and plaintiff is quite content to take his testimony by deposition. Defendant will have ample opportunity to cross-examine him when his deposition is taken on its claim that the movement of plaintiff to New York aggravated her condition, if that claim has any substance. Floyd is the defendant's own employee. There should be no difficulty in having him and defendant's own investigator and photographer here for the trial.

I see no major obstacles to a fair, just and easy trial of the action in this district. There is no magic in having a Virginia jury pass on the questions in this case merely because the accident occurred in that state. Nor should there be any difficulty in having Virginia negligence law applied by the judge sitting in this district as defendant seems to think. They constantly handle similar problems.

Defendant has failed to show that the balance of convenience in the interest of justice weighs so heavily in its favor as to overcome the substantial weight to be given to plaintiff's choice of forum. Indeed, if anything, the balance seems to be tipped in plaintiff's favor.

The motion for transfer is denied.

It is so ordered.

Dated: New York, N. Y.
July 23, 1964

FREDERICK vP. BRYAN
U.S.D.J.